UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 5

In the Matter Of:

MASTER SECURITY COMPANY, LLC,

Employer, **Case No. 5-RC-129198**

-and-

NATIONAL ASSOCIATION OF SPECIAL POLICE AND SECURITY OFFICERS

Petitioner,

-and-

INTERNATIONAL UNION SECURITY POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Union.
_____/

INTERVENOR'S EXCEPTIONS TO HEARING OFFICER'S REPORT ON OBJECTIONS AND BRIEF

Introduction

The Intervenor International Union, Security, Police and Fire Professionals of America (SPFPA) (hereinafter "SPFPA") filed objections to the mail-ballot election held in the instant case between July 2, 2014, the date the ballots were mailed, and July 23, 2014, the date the ballots were counted. Of the approximately 70 eligible voters, 36 employees cast ballots in the election. There were 4 void ballots submitted and 1 challenged ballot. Of the remaining 31 ballots, 13 were cast in favor of the SPFPA, while 17 were cast for Petitioner. A single ballot was cast against both Unions.

On July 29, 2014, the SPFPA filed timely objections alleging that during the critical period:

- the Employer allowed the Petitioner's representatives improper access to the worksite for the purpose of campaigning in support of its position; and
- the Employer's representative improperly indicated to employees that it preferred to negotiate with the Petitioner instead of the Intervenor and encouraged employees to vote for the Petitioner.

On September 2, 2014, a hearing was held before Hearing Officer Rachel R. Babale. On October 3, 2014, the Hearing Officer issued her Report on Objections. In her Report, the Hearing Officer recommends to the Board that the Objections be overruled in their entirety and that the Board issue a certification of results. The Hearing Officer recommends that the Objections be dismissed as she concluded that the errors in the election process were insignificant or were not capable of affecting the unit employees' vote preference.

Contrary to the findings of the Hearing Officer, the record established at the hearing substantiates and validates SPFPA's Objections. That evidence establishes that as a result of the Employer's conduct during the critical period, laboratory conditions required for NLRB election were not present in this case.

EXCEPTIONS:

The International Union, SPFPA files these Exceptions to the Hearing Officer's Report on Objections:

- The Hearing Officer ignores or misapplies the record evidence that establishes that the Employer's conduct tainted sufficiently the election process such that a new election is warranted.
- The Hearing Officer's recommendation to dismiss the Objections raises substantial questions of law or policy because of the absence of or departure from Board precedent.

The International Union, SPFPA excepts to the Hearing Officer's recommendations that Objections 1and 3 be overruled.

Statement of Facts

Master Security (hereinafter "Employer" or "Company") is a security services contractor. At the subject location, it employs a bargaining unit of approximately 70 security officers. At all times pertinent hereto, the SPFPA was the exclusive bargaining representative for the bargaining unit.

On May 22, 2014, the Petitioner filed a Petition for Representation with respect to the bargaining unit described above. On May 30, 2014, a Stipulated Election Agreement for a secret ballot election conducted by mail was approved by Region 5. Ballots were subsequently mailed to employees in the stipulated unit on or about July 2, 2014. The ballots were then opened and counted at the Regional Office on July 23, 2014. Intervenor filed its objections on July 29, 2014 and a hearing was ultimately held on September 2, 2014.

During that hearing, Intervenor presented the testimony of bargaining unit members Bede Iwe, Ikechukwu Ibe, and Leule Kefale, in support of its objections that the Employer had engaged in misconduct during the critical period.

In her Report on Objections, the Hearing Officer made certain findings of fact resolving disputes between the respective documentary exhibits and witnesses with conflicting testimony. Although Intervenor does not necessarily agree with the Hearing Officer's determinations of fact, Petitioner recognizes the Board's great deference to a Hearing Officer's factual determinations. Accordingly, in filing and supporting these Exceptions, except as noted below where the Hearing Officer made clearly erroneous findings, Petitioner relies upon the factual record as determined by the Hearing Officer within her Report, supplemented with factual assertions that are part of the record that the Hearing Officer ignored or otherwise did not discredit in her Report.

Argument:

Objection 1: The Employer allowed the Petitioner's representatives improper access to the worksite for the purpose of campaigning in support of its petition.

Objection 3: The Employer's representative told employees that it preferred to negotiate with the Petitioner over the Intervenor and encouraged employees to vote for the Petitioner.

With respect to representation elections, employers are required to "maintain a strictly neutral attitude. Especially . . . where the adherence of the employees is being sought by rival labor organizations." *Harrison Sheet Steel, Co. v NLRB*, 194 F 2d 407 (7th Cir. 1952). The Board will find that employees have been restrained or coerced with respect to their Section 7 rights where an employer unlawfully supports or assists one of the competing unions. *Id*. However, "an employer does not improperly interfere with an election by expressing a preference for 1 of 2 competing unions and accompanying his statement with reasons . . ." if (a) "the reasons . . . are not improperly or coercively set forth

. . .” or (b) there are no accompanying unfair labor practices. See *Stewart – Warner Corp.*, 102 NLRB No. 130 (1953); *Sylvania Electric Products, Inc.*, 106 NLRB No. 196 (1953).

In this case, SPFPA has objected to the election on the basis that the Employer improperly expressed its preference for the Petitioner over SPFPA and that those statements were accompanied by the Employer's unfair labor practice of granting the Petitioner unequal access to the site for the purpose of campaigning.

The Hearing Officer rightly found that a non-employee representative of the Petitioner was granted access to a security post by an employee. However, she went on to find that there was no evidence as to what was discussed at the meeting. While Mr. Ibe did not hear the conversation, he did present uncontested testimony that Petitioner's representative introduced himself and indicated that he had a meeting scheduled with a bargaining unit employee. He then went and engaged in a meeting with said employee. Contrary to the Hearing Officer's finding that "there is no evidence on the record to support [Ibe's] belief . . ." that the employees who met with the Petitioner's representative were not on break, the record actually reflects that Mr. Ibe knew that the officers in question had not been properly relieved and thus could not be on break. (Report at 5). Again, that evidence is uncontested. Based on the available evidence, the purpose of the meeting is not in dispute. Petitioner's representative met with unit employees while they were on duty for the purpose of campaigning.

According to the Hearing Officer, "there is no evidence in the record . . . to show that the Employer knew what occurred." (Report at 5). However, the record supports a finding that the area in question is monitored by security cameras. In fact, there "are over 380 surveillance cameras on site, with live video feed to the command center." (Report at

4). The command center is in turn is ultimately overseen by members of management. Thus, management had to be aware of the visit/meeting with unit members at a security post while employees were on duty.

Moreover, the Hearing Officer's finding that that "the Intervenor does not allege that pro-Intervenor employees were discriminatorily prohibited from engaging in union activity, while pro-Petitioner employees were not. . . ." is not supported by the evidence in the record. (Report at 5). The Hearing Officer's other findings betray her conclusion that the Intervenor did not make such an allegation. That is, it is impossible to conclude that the "evidence clearly establishes that the Employer maintains and enforces a policy prohibiting employees from engaging in discussions with each other while on post. . . ." for any reason, and yet also find that the Intervenor was not discriminated against when the Employer allowed a non-employee representative of the Petitioner to access the site, speak with unit employees, and then issued no discipline to the officers with whom Petitioner's representative spoke. (Report at 4). Clearly, that allegation was part of the Intervenor's objections and clearly that objection is supported by the weight of the evidence.

The Hearing Officer also erred in her conclusion that the statements made to unit employees by a member of management with respect to the Employer's preference of dealing with Petitioner over the Intervenor was not violative of the Act. (Report at 6). The Hearing Officer noted that an "employer may express its views regarding the advantages or disadvantages of representation by one of the several competing unions as long as it does not threaten or promise employees that it will act in a different manner depending on which union they choose." (Report at 6). In this case, although not expressly communicated, the Employer made implied promises to employees that they would get a

better deal if the Petitioner represented them instead of Intervenor. The implication by the Employer was tied to its allowing the Petitioner access to employees otherwise not allowed to the Intervenor. When coupled with that improper access, statements in support of the Petitioner naturally would lead employees to conclude that they would be better off with a Union favored by the Employer.

Additionally, the record supports a finding that the Intervenor met its burden of proving that the actions of the Employer were known to enough employees to affect employee free choice. As noted by the Hearing Officer, the Petitioner won the election by a tally of 17 to 13. If only two of those employees who voted for the Petitioner voted differently because the process was not tainted by the Employer, then there could have been a different outcome. The same is true if 4 or 5 more employees decided to vote. In this case, the record shows that at least three officers knew about management's statements. At least another three engaged in an improper meeting while on duty. Those 6 officers are more than enough to affect the outcome of the election. Thus, it should be held that there were plenty of officers who were aware of the Employer's misdeeds to warrant a new election.

The evidence adduced during the hearing established that the Employer's actions affected improperly the outcome of the election. By disregarding its rules with respect to campaigning at the site solely for the benefit of the Petitioner, it sent a message to bargaining unit members that the Petitioner would be granted special benefits if selected as the bargaining representative. That point was further solidified in the minds of the bargaining unit members when the Employer announced so cavalierly that it would prefer to negotiate with the Petitioner's representatives. The fact that only about one half of the

bargaining unit voted in the election can also be attributed to the Employer's actions, as it likely had the effect Because of the Employer's actions, the requisite laboratory conditions were not present and the Board must direct that a rerun election be held.

CONCLUSION

Intervenor SPFPA respectfully requests the Board to grant the Objections to the Election as described above and direct that a new election be held without delay.

Respectfully submitted,

/s Michael J. Akins
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Dated: October 17, 2014

Certificate of Service

The undersigned certifies that he has served a copy of these Exceptions upon the Region electronically, and to the Petitioner and the Employer by placing it in first class mail, as follows:

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